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FM AMEMBASSY NASSAU  
TO RUEHC/SECSTATE WASHDC 2123  
INFO RUEHBE/AMEMBASSY BELIZE 1225  
RUEHWN/AMEMBASSY BRIDGETOWN 5353  
RUEHGE/AMEMBASSY GEORGETOWN 3503  
RUEHKG/AMEMBASSY KINGSTON 8292  
RUEHPO/AMEMBASSY PARAMARIBO 0877  
RUEHPU/AMEMBASSY PORT AU PRINCE 3325  
RUEHSP/AMEMBASSY PORT OF SPAIN 4494  
RUEHDG/AMEMBASSY SANTO DOMINGO 2601

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SIPDIS

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STATE FOR WHA/CAR WBENT, EB/IPE AMADAMO

E.O. 12958: N/A

TAGS: [ETRD](#) [BF](#) [KIPR](#)

SUBJECT: BAHAMAS: INPUT FOR SPECIAL 301 REVIEW

REF: SECSTATE 14937

1A. Optical Media Piracy (CDs, VCD's, DVD's)  
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1. No CD's, VCDs, or DVDs are legally mass-produced in The Bahamas. Music CDs produced in The Bahamas by Bahamian artists are duplicated and packaged for sale by U.S. facilities. There is widespread sale of pirated goods, however. A chain of video rental/sales stores, Super Video, openly sells and rents pirated media. Several other stores in The Bahamas sell pirated media, and vendors of pirated media regularly market their wares on sidewalks outside grocery stores, from roadside stands, and elsewhere. According to government officials, adequate and effective enforcement exists under a law in effect since 1998. However, a complaint must be lodged for these provisions to be applied. Bahamian copyright owners have sought and been given redress based upon the 1998 act, but few other complaints have been lodged. The GCOB uses the lack of complaints to justify its position that there is not significant optical piracy in the country. GCOB officials further suggest that without the filing of complaints by copyright owners, there is little to be done by the Government to enforce anti-piracy laws. Review of relevant Bahamian law, however, suggests that police inspectors may lawfully seize pirated media with reasonable cause, even if a formal complaint is not made. This remedy is rarely, if ever, used.

1B. Use/Procurement of Government Software  
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2. The Data Process Unit (DPU) of the Ministry of Finance purchases all government software. The unit complies with international standards of copyright protection. Each agency must request software from the DPU, which then purchases, installs, upgrades and troubleshoots, as required. All software used by the government is licensed according to industry and international standards.

1C. TRIPS Compliance and FTA Implementation  
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3. (C1) Amendments made in 2004 to the Copyright Act and Regulations, which would narrow the scope of compulsory licensing to include only "communication and reception over the air and not encrypted", have not been implemented. The GCOB will not put the amendment into effect until Cable

Bahamas has licenses in place for programs being broadcast over its cable system. Cable Bahamas made good faith efforts in 2005 to obtain those licenses, but remains unable to reach agreement with the MPAA. Cable Bahamas views Spanish language programming offered by existing licensing with the MPAA as unmarketable, and the MPAA is unwilling to renegotiate licensing for more appropriate English language programming.

14. The GCOB believes it has complied with the agreement reached with the U.S. in 2000, which requires the GCOB to amend the Copyright Act and Regulations to narrow the scope of compulsory licensing. Amendments were made, but not implemented. The 2000 agreement also requires the GCOB to begin consultations with U.S. copyright owners and/or holders to provide enhanced equitable remuneration for compulsory licensing and to amend the royalty rate structure in effect. The GCOB has made good faith efforts to consult with US copyright owners, and has on multiple occasions sought to meet regarding these issues, to date without response. Bahamian beneficiaries of compulsory licensing are required to deposit remuneration with the Copyright Tribunal, but U.S. copyright owners have not made claims on these funds.

15. The GCOB continues to welcome action by the U.S. government to encourage U.S. copyright owners to enter into good faith negotiations with cable operators in The Bahamas to provide voluntary licensing on commercial terms. The GCOB believes that the U.S. has failed to meet its obligations in the 2000 agreement to facilitate these negotiations. According to the GCOB, copyright owners continue to complain, but will not negotiate to resolve the issue.

16. (C2) The Bahamas has no new legislation related to geographical indications, integrated circuits, plant variety protection or TRIPS based IP.

17. (C3) The Bahamas has no new legislation related to domestic protection of traditional knowledge or expressions of folklore, or addressing issues related to genetic resources and access and benefit sharing.

18. (C4) There is insignificant test data submitted by pharmaceutical and agricultural chemical companies in The Bahamas to make protection of test data an issue.

19. (C5) There is no other pending IP related legislation or coordinated government effort regarding IP protection. According to the GCOB, it is strongly committed to ensuring there is full and complete protection for intellectual property in The Bahamas. The GCOB remains willing to receive U.S. input and assistance to ensure protection for intellectual property.

#### 1D. Enforcement

10. The GCOB believes that it is appropriately enforcing IPR violations. According to government officials, complaints by copyright owners are addressed under the 1998 act, but claim that without the filing of complaints by copyright owners, there is little to be done by the Government to enforce anti-piracy laws. However, review of relevant Bahamian law suggests that police inspectors may lawfully seize pirated media with reasonable cause. This remedy is rarely, if ever, used. Sales of pirated goods in video chains, on sidewalks, in the local "straw market" and elsewhere is common. Because of lack of recognition of widespread sale of pirated goods, and lack of enforcement without specific complaints by the copyright owner, enforcement does not serve as a significant deterrent against the sale of pirated goods.

#### 1E. Treaties

11. The GCOB is not a member of the WTO. It is nevertheless reviewing WTO requirements and continues to consider amendments that will bring The Bahamas into compliance with

WTO requirements, including WCT and WPPT.

F. Training  
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¶12. The GCOB is receptive to training and generally cooperative with U.S. efforts, making it a good candidate for IPR training. The Bahamas would benefit from training regarding enforcement of IP violations, including improvement of police sensitivity to IPR violations and police use of seizure of pirated goods upon reasonable suspicion of violation. Post believes that improved police efforts could make a significant impact on street sale of pirated goods. The GCOB has also said it would welcome information and training from the U.S. regarding steps to establish controls on, and require licensing of, optical media manufacturing capacity and equipment and material inputs.

G. Recommendation to Maintain on Watch List  
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¶13. The amendments made to the Copyright Act and Regulations in 2004 justified last year's move from the Priority Watch List to the Watch List. However, there has been no further progress in 2005 to justify the removal of The Bahamas from the Watch List. Despite GCOB efforts, negotiations between the Bahamian beneficiaries of compulsory licensing, primarily Cable Bahamas, and U.S. rights holders remain at a stalemate.

The GCOB uses that stalemate as an excuse for not implementing the 2004 amendments and continues to request U.S. assistance in mediating the dispute. The retail sale of pirated goods continues to be tacitly permitted. U.S. rights holders have a remedy under the 1998 Copyright Act, but the small size of the Bahamian market has limited the degree of attention and efforts the rights holders have devoted to official complaints. The GCOB does not pursue other potential enforcement actions to stop the retail sales. The GCOB has made an effort to put itself into compliance with the letter of its 2000 agreement with USTR, but the core problem remains -- compulsory licensing is defacto lawful in The Bahamas. For that reason, coupled with a lax attitude toward retail enforcement, Post recommends that The Bahamas remain on the Watch List.

ROOD